обов'язки, які вимагають емоційних витрат, а також у прагненні виправдати це шляхом знецінення діяльності та її предмета.

Ключові слова: *персонал місць несвободи, професійна деформація, детермінанти, психологічне перевантаження, емоційне вигорання, екстремальність, запобігання*

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MONITORING OF EMPLOYEES' WORK EMAILS AS A MEANS OF INFORMATION SECURITY OF A POLISH ENTERPRISE

Abstract. In the given article, the problem information security of Polish enterprises is researched. One of the directives of the given information security is the control over the employees' work emails. In the article, the legal obligations of the enterprises as for the work email monitoring and the right for personal life respect are analyzed. The issue of sanctions for confidentiality correspondence violation and the right to respect for the private life are dealt with.

Keywords: *information security, privacy, sanctions, European Court, law, Labor Code*

Introduction. Relevance for studying different aspects of information security is connected to the process of globalization, when the significance of information is constantly increasing. Information poses as an important element for the state functioning, democratic development of the society, the relationship between the state, citizens and society. The human information rights are considered an integral part of civil rights.

Therefore, the enterprises face the problem of ensuring information security. Every employer is obliged to develop and implement a set of measures which aims at securing information from an unauthorized access, ensuring its confidentiality, accessibility and integrity.

Nowadays, almost every enterprise either creates or demands from its employees to create a so-called work email. As a rule, it is an email connected with the domain of the enterprise, which can help to identify the employees with the company when working with other enterprises. Unfortunately, this email address may be used not only for performing the company's activity but also for other private purposes, which may lead to the negative repercussions for the company.

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To avoid the employee using the work email for personal purposes, the employer has to own the set of tools, with the help of which he can check the use of the work email. It has to be done correctly so that the right to the private life and confidentiality of correspondence is not violated. The enterprises' decision-making actions have to be characterized by the proportionality principle which is important in checking correspondence of employees. In case of neglecting such measures, the enterprise may have financial losses or face the negative consequences as a result of informational security violation.

Analysis of recent research and publications. According to Polish law, the employee has the right to check the employee's correspondence made from work email. It natural for the employer to have the right to know the content of such correspondence as it is done on the company's behalf.

Thus, work emails control is the right of the employer. It is possible according to the Article 223 part 1 of the Labour Code of the Republic of Poland (1974), which states that it is possible in case of necessity to provide the organization of work that ensures the full use of working time and the proper use of labor tools provided to the employee. The employer may introduce control over the employee's work email (email monitoring).

Thus, the work email control is possible, but it needs to have a strictly determined aim of increase in employees' work efficiency and the ability to check whether or not they use the tools provided by the employer (K. Jaskowski, https://sip.lex.pl).

The regulation providing enterprise with the right to control the employees' work emails was included in the Labour Code of the Republic of Poland. Before the given regulation, there were no norms that gave the employer the ability to control the employees' correspondence. Therefore, this issue has been the subject of discussions. The email checks were one of the most controversial forms of monitoring. It is connected to the fact that the secrecy of correspondence is protected by the Polish Constitution. According to the Article 49 of the Constitution of the Republic of Poland, the freedom and protection of the secrecy of correspondence is guaranteed, and its limitation may occur only in cases, stated by the Law and in the manner specified by it. That is why the legislator pays significant attention to the secrecy of correspondence. It has to be taken into account that the exercise of constitutional rights and freedoms may be restricted if it is necessary in a democratic state for its security, public order, environmental protection, protection of health and moral, freedoms and rights of others, provided that these restrictions do not violate the essence of these freedoms and rights (Article 31 part 3 of the Constitution of the Republic of Poland). Therefore, the freedom of correspondence secrecy can be neglected only if it is stated by the Law. The legislator has to determine directly the necessity of correspondence secrecy violation, stating the circumstances and modes of such violation. Only this way the violation of correspondence secrecy right is treated as acceptable (1997).

The dubious issue was the monitoring of work emails. There were no principled doubts that the personal correspondence of the employee is above the employer's control (M. Kuba, https://sip.lex.pl). On the one side, when talking about work correspondence, it was hard to determine the scope of the correspondence secrecy. It was particularly difficult to decide, who, except of the people taking part in correspondence, is authorized to control the given correspondence. It is stated that as long as the employee leads correspondence on behalf and in favor of the employer, the latter can be treated as a person authorized to access this information (M. Kuba, https://sip.lex.pl).

On the other side, the secrecy of correspondence sphere covers only the communication participants, namely the employee and his interlocutor. It is important as the secrecy of correspondence is also provided by the criminal legislation. According to the Article 267 paragraph 1 of the Criminal Code of the

Republic of Poland (A. Bojanczyk, 2003), a crime against the secrecy of information is committed by those who gain access to information not intended for him without permission, by opening a closed letter, connecting to a telecommunications network or e-mail (G. Bogatyrev, A. Bogatyrev, & M. Puzyrev, 2017, 40 p.). Criminal liability also applies to those who illegally gain access to all or part of the IT system (paragraph 2 of the Article 267 of the Criminal Code of the Republic of Poland), as well as to those who receive or use listening devices, visual devices or other software to obtain information to which he has no right of access (paragraph 3 of Article 267 of the Criminal Code) (1997).

Therefore, without doubt, the solution of the further mentioned dilemma demanded the legislators' intervention. The changes had to be introduced for the enterprises not to be subjected to criminal responsibility for actions aimed at creating the conditions for its safe functioning and inspecting the activities of people working for this enterprise (M. Kuba, 2016).

The purpose of our article is to study the problem of information security of Polish enterprises.

Formulation of the main material. The fact that the absence of the legal grounds for the employee's email check is unacceptable is proven by the legislation experience in other countries. For example, the law of Great Britain makes clear exceptions for the employer regarding to the fact of wiretapping and reading employees' emails (without permission from both sender and receiver). The employer has the right to control and record the messages in certain circumstances, among them for assuring the employees keep to the standards of the company, prevent or detect the crime, investigate or detect the unauthorized use of the telecommunications system or ensure the security of the system and its effective functioning (2000). In its turn, Finnish law on protection of confidentiality in professional life regulates the rules controlling the employer regarding the employees' email, namely the namely, the restoration and opening of messages sent to the email address of the employee and messages sent by the employee from this email address (2004).

Consequently, there are no doubts that the access of the employer to the employee's correspondence sent on behalf of the company was dubious despite the business nature of this message and the fact that it is created with the tools provided by the employer (V. Medvedev, 1992, pp. 33–40).

Therefore, it is necessary to positively evaluate the establishment of the regulation, which lawfully authorizes the employer to control the employee's work email. They legitimize the enterprise to take care of its safety in the field of activities done by its employees (A. Bogatyrev, 2016, 198 p.).

The legislator refers to the proportionality rule by allowing the control over the employee's email. Taking into account the further mentioned regulation, the employer can introduce the control over the employee's work email if it is necessary for work organization. It should also ensure the fully fledged use of working time and the proper use of work tools provided by the employee. While choosing the conditions for subordinating the employee to control in this regard, two tasks were identified for the labour organization, which allow the full use of working time by employees and the proper use of business tools. In the given case, the legislator uses the particle «and» underlining the connection between the further mentioned aims of the employer's controlling activity. As a result, it means that the corresponding conditions have to be kept to simultaneously (M. Kuba, 2016).

Thereupon, the monitoring of the employee's work email is acceptable if it is necessary for ensuring the proper work organization (which allows the full-fledged use of working time) and the proper use of work tools provided by the employee.

These conditions do not always come together. The employee can use the tools in a way not corresponding to their purpose in the working time (for, example, during the break). However, it has to be mentioned that the necessity to keep to

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both obligations, stated in regulation commented, increases the protection of the employees from the excessive control of the employer, but it can also be the source of abuses done by the employee (M. Kuba, 2016).

In the analyzed sources it is stressed that while controlling the work employee's work email, the employer has to comply with the following principles:

necessity principle;

employee's dignity and personal rights protection principle

trade unions liberty and independence principle

According to the necessity principle, the monitoring of the employee's email is acceptable when it is necessary for the work organization which allows for the full-fledged use of time and working tools allowable for the employees (have to be performed together) (M. Kuba, 2020).

The necessity principle means that the employer has to state that the above mentioned aims cannot be achieved otherwise than by the way of employee's monitoring. The circumstances which have significance for the assessment are the type of work, its nature and the position of the employee. The necessity principle is additionally marginalized by the employee's dignity and personal rights protection principle. Using the accordance monitoring is acceptable only if the personal property of the employee, as well as the secrecy of correspondence, (Article 22^3 paragraph 2 and 4 of the Labour Code of the Republic of Poland) is not violated.

According to the trade unions liberty and independence principle, the monitoring cannot include, without any exceptions, rooms (an analogy to the email address) used by the trade union.

Besides, the Article 22^2 § 6-10 and Article 22^3 §4 of the Labour Code of the Republic of Poland makes it visible that any form of employees' monitoring is legit if it was made by the principles stated there.

These principles comply with the transparency in processing personal data principle (M. Kuba, 2020). Such requirements serve the basis of this principle:

a) the aims, scope and mode of using monitoring are defined in collective labour agreement, labour regulations or in message if the employer does not make collective labour agreements (part 6 of Article 22^2 of the Labour Code of the Republic of Poland);

b) the employer informs the employees about the monitoring in the mode acceptable for the employees not later than 2 weeks before the start of its implementation (part 7 Article 22^2 of the Labour Code of the Republic of Poland);

c) before allowing the employee to start working, the employer provides him with the written information on the aims, scope and mode of conducting monitoring (part 8 Article 22^2 of the Labour Code of the Republic of Poland) (M. Kuba, 2020).

The compliance with the transparency principle, while controlling the correspondence, is of a principal importance for respecting the employee's personal rights. The employee has to be informed about the monitoring of his work email. The employee who has not been informed about by the employer about the monitoring has the lawful right to hope that his private life and communication are protected (K. Jaskowski, https://sip.lex.pl).

By implementing this form of control the employer is obliged to inform the employees in a mode, defined by the given company in two weeks before the start of the monitoring (Article 22 §7 in line with Article 22 §3 of the Labour Code of the Republic of Poland). Upon hiring a new employee and the company has to provide him with the written information on the aims, scope and mode of email monitoring before allowing him to do the job (Article 22 §8 in line with Article 22 §3 of the Labour Code of the Republic of Poland). Besides that, the employer has to mark accordingly the emails, stating clearly that the given email is controlled by the company. Marking computer or another device used for email service is not considered sufficient if the marking does not include the information that the email is controlled too (M. Kuba, 2020).

In addition, according to Article 222 §3 of the Labour Code of the Republic of Poland, the aims, scope and mode of the above mentioned form of monitoring have to be stated in the collective labour agreement or labour regulations or in message if the employer does not make collective labour agreements or is not obliged to set up the rules. Consequently, the employer has to define the aims of the monitoring, stating clearly the scope of controlling activity in the discussed area. Besides, the scale of monitoring and the data collected have to be defined. The scale of data has to be compliant with the aims of monitoring. Therefore, if getting information on the sender and receiver, date and time of sending and receiving and the topic of the message is enough, the company does not have to analyze the content of correspondence. However, the employee has to be informed that this specific data will be collected while making the controlling activity. The mode of monitoring as well as defining the ways of email controlling and its rules have to be the subject of agreement too. Particularly, the circumstances and the frequency of controlling have to be defined (M. Kuba, 2020).

According to the Article 22 §2 of the Labour Code (1974) the email monitoring cannot violate the secrecy of correspondence or the right for privacy of life (I. Sokolov, A. Sysoyev, & S. Gornostayev, 2005, 206 p.).

Although the term «correspondence» is associated with communication through letters, according to the decision of the European Court, the secrecy of correspondence covers all means of communication. A similar view is expressed by the European Court of Human Rights, pointing out that the term «correspondence» also applies to communication by electronic means, such as email (1997).

Without doubt, the employee's right to the secrecy of correspondence can be violated while using email for monitoring. Despite the fact that the law allows to control only work messages, there is a risk of finding private messages in the employee's work email.

As is underlined in the research, even though the employer forbids using work email for private conversations, when he finds the private correspondence of the employee who neglected that prohibition, the employer is not allowed to read the whole conversation (M. Kuba, 2016).

Therefore, as is shown in the legal literature, the law which forbids violation of the secrecy of correspondence is considered fully justified. From the point of view of business, such a prohibition bears a possible risk for the employer of being held responsible for the measures taken to ensure the company's safety. In order to avoid the non-deliberate violation of the employees' personal space it is advised to make the definition of the employees' private messages. However, the prohibition of using work email for private purposes is not an easy matter (1997).

A lot of polish laws impose sanctions for violation of the right for privacy and the secrecy of correspondence.

The sanctions for violation of the regulations on authorized monitoring of the employee, monitoring procedures and other requirements for the processing of personal data of the employee are specified primarily in the regulations of the Law on Personal Data Protection from 2018 (M. Kuba, 2016).

Besides, if the employee recognizes his personal rights violation or suffers from its consequences, he has the right to demand protection on the basis of the regulations of the Civil Code of the Republic of Poland (1974).

In general, the employee may also use his right to immediately quit the labour relations as for the serious violation of main obligations by the employer according to Article 55 part 1 of The Labour Code of the Republic of Poland (1974).

As was mentioned above, the secrecy of correspondence violation may even lead to the criminal responsibility as well as to violation of the Convention for the Protection of Human Rights and Fundamental Freedoms. However, in case of the given violation, the case will be viewed by the European Court of Human Rights and instead of the employer the responsible side will be the state.

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Let us look at the employee's work monitoring and intrusion in their right for the respect for private life. The usage of Law regulations which allow conducting monitoring, has to be done with regard to the necessity to balance these contradictory values and interests of both sides of labour relations. It means that monitoring as means of controlling employee has to include the need to respect the employee's personal rights, among them the right for personal life. The connected standards are set by the European Court of Human Rights in the Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is a guarantee of the above mentioned right to respect for private life (in particular, judgments of 9 January 2018, 1874/13 and 8567/13, Lopez Ribalda and Others vs. Spain, LEX № 2418052 from 11.28.2017 p., 70838/13 Antović and Mirković vs. Montenegro; LEX №2398411; Grand Chamber judgment 05.09.2017 g., 61496/08 Bărbulescu vs. Romania, LEX №2347233; 03.04.2007 g., 62617/00 Copland vs. Great Britain, LEX № 527588 of 2 August 1984, 8691/79 Malone vs. Great Britain, LEX № 80974) (M. Kuba, 2016).

In this context, the judgment in Bărbulescu vs. Romania (Grand Chamber judgment of 5 September 2017, statement № 61496/08) deserves special attention.

Bohdan Bărbulescu, the citizen of Romania, on request of his employer created an account in a public messenger, which had to be used for communication with clients. While conducting monitoring on the content of messages, received by the employee, it was noticed that this messenger account is also used for the employee's private conversations. The employer broke the labour contract with Mr. Bărbulescu. The employee, in his turn, accused the employer of the unreasonable termination and the excessive intrusion in private life. Later, he handed the case to the court. The court agreed with the employer. In 2008 Bohdan Bărbulescu handed the case to the European Court of Human Rights stating that the Art.8 of Convention for the Protection of Human Rights and Fundamental Freedoms had been violated. The given article refers to the right to respect for family life, home and correspondence (1974).

The European Court of Human Rights made a claim that the employee's correspondence at work is covered by the concepts of «privacy» and «correspondence» and therefore the Article 8 of the Convention has to be applied.

The Court's idea was that the potential violation has to be looked at from the point of view of the state positive obligations. In the sphere of labour law, it had to be evaluated if the state was required to create the legal basis for the protection of employees' rights to the private life and correspondence in the context of their relations with the employer. The relations between the employee and employer are based on their mutual agreement. They include specific rights and obligations of both sides, which differ significantly from the generally accepted ones in the relations between individuals. From a legal point of view, labour legislation leaves space for the negotiations between both sides of a labour agreement. To conclude, the sides determine most part of their relations (2017).

The Court noted that regulating relations in this area could not be subjected to the unlimited freedom. National authorities must ensure that the measures implemented by the employer to monitor correspondence and other means of communication, regardless of their scope and duration, are accompanied by adequate and sufficient guarantees against abuse.

The Court stated that in the given context the following factors have to be taken into consideration:

– whether the employee was notified of the employer's ability to control correspondence and conduct monitoring. However, in practice employees can be notified in different ways depending on case circumstances. The Court recognizes that the implementation of such measures that meet the requirements of Art. 8 of the Convention, as a rule, requires that the notification clearly indicate the nature of the monitoring and is given to the employee prior to its conduct;

– the scope of monitoring and the degree of interference in the employees' private lives. In this regard, a distinction should be made between monitoring the flow of correspondence and its content. It should also be taken into account whether all correspondence was monitored, as well as whether monitoring was limited in time and how many people had access to its results;

– if the company has provided the justified reasons that excuse the monitoring of correspondence and knowledge of its actual content. In a situation where correspondence monitoring is an inherently more invasive method, it needs more serious justification;

– whether it was possible to create a monitoring system based on methods and measures that are less stringent than direct access to the content of employees' correspondence. It is necessary, given the special circumstances, to assess whether the goal of the enterprise can be achieved without direct access to the full content of the employee's correspondence;

– the consequences of monitoring for the employee and the way the company used the results of monitoring, in particular, whether or not it served to achieve its stated purpose;

– whether the employee used appropriate guarantees, especially when the employer's monitoring was strict. In particular, it should prevent access to the actual content of the correspondence in question, except in cases where the employee has not been notified of of monitoring before its conduction (2017).

The government has to ensure that the employee whose correspondence was tracked receives access to court under whose jurisdiction is possible to check to what extent the above mentioned criteria are kept to.

The European Court of Human Rights has to evaluate the method which the national courts applied when dealing with the employee's case about the violation of his right to private life and correspondence by the employer (2017).

In the given case, the Romanian courts paid attention only to the fact whether or not the employer revealed the content of correspondence to the employee's colleagues. The court stated that this argument is not sufficiently justified in the case materials and that the complainant did not provide any other proofs. Therefore, it considered that the application was related to the employee's dismissal as a result of monitoring conducted by the employer.

The European Court of Human Rights stated that in this case the Romanian court had to be more precise about whether or not the company used monitoring according to the Article 8 of the Convention and the complainant's right to the respect of his private life and correspondence was not violated.

Thereby, the task of the European Court of Human Rights is to establish, in all circumstances, the competent authorities. The courts have a good balance of competing interests in the event if monitoring is applied to the complainant. He acknowledged that the employer has a legitimate interest in the effective operation of the company, which can be done through the verification mechanism done to check that employees perform their professional duties properly and with due diligence (2017).

For this reason the Court made a decision to check how the national courts established the facts relevant to the given case. By studying this case, the Court had to determine if the national courts acted according to the regulations of the Convention.

The Court reminded that, regarding the factual findings, it was aware of the ancillary nature of its task and its obligation to exercise caution, assuming the role of the actual court, unless this was unavoidable. The court cannot replace the assessment of the facts set out by the national courts, as they must establish the facts on the basis of the provided evidence. However, while examining the case, the Court is not bound by the decisions of the national courts and is free to assess them in the light of all the materials submitted. Despite this, the convincing arguments are needed for the Court to depart from the factual findings of the national courts (2017).

The proof provided for the Court show that the employee was informed by

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the employer about the in-house regulations, which do not allow using company resources for personal needs. It confirmed reading the corresponding document and signing its copy on December 20, 2006. In addition, the employer sent a notice dated 26 June 2007 to all employees, reminding that the use of the company's resources for personal purposes was prohibited, and one employee was fired for violating this prohibition. The complainant read the notice and signed a copy on an unspecified date between 3 and 13 July 2007. The court also noted that on 13 July 2007 the employer twice requested a clarification for the use of official mail for personal purposes. Initially, when the employer showed him a list of his correspondence, the employee stated that he used the Yahoo Messenger account only in connection with work. Fifteen minutes later, when the employer showed him a 45-page correspondence with his brother and his fiancée, the employee accused the employer of violating the confidentiality of the correspondence (Ombudsman. Monitoring the employee's communications... , https://www.rpo.gov.pl).

According to the Court, the national courts correctly identified the parties to the dispute, clearly stating the applicant's right to respect for his private life, as well as the legal principles applied. In particular, the Court of Appeal referred directly to the principles of necessity, purpose, transparency, proportionality and security, and stressed that the monitoring of correspondence falls under these principles. The courts also examined whether disciplinary proceedings had taken place in an adversarial manner and whether the applicant could present his arguments.

It is left to decide how the national courts took into account the above criteria in determining the extent of the applicant's right to respect for his private life and correspondence against the employer's right to do monitoring, including his disciplinary rights, in order to ensure the effective functioning of the company.

As considering the fact if the applicant was previously informed by the employer, the Court stated that he claimed that he might not be informed about the scale and type of monitoring or about the fact that the employer might have had access to the content of his correspondence. The Court stated that, regarding to the possibility of conducting monitoring, the national court simply noted that «the employees noticed that one of their coworkers was fired before the reprimand of the applicant», and deduced that the applicant was warned against using company's resources for his personal purposes. National courts have not defined whether the applicant was previously informed about the fact that employer might conduct monitoring, its sphere and character. The Court agrees that for the message being viewed as a previous notice it has to be made before the monitoring, especially when it covers the access to the employees' correspondence. The international and European standards are developing in this direction, demanding from the employer to inform the subject of monitoring beforehand.

With regard to the scope and extent of the violation of applicant's privacy, the Court noted that this issue had not been considered by the court, although the employer seemed to have registered the whole applicant's correspondence during the monitoring period, had access to it and copied its content (Ombudsman. Monitoring the employee's communications... , https://www.rpo.gov.pl).

It also appears that the courts did not sufficiently assess the legitimate reasons that justify the monitoring of the applicant's correspondence. No specific goal that could justify such strict monitoring is mentioned. It is only stated that there is the need to ensure that the company's IT systems are not damaged, its responsibility in the event of illegal activities in cyberspace and the disclosure of trade secrets of the company. However, the Court considers that these examples can only be viewed as theoretical, as there is no indication that the applicant actually exposed the company to this type of risk (Ombudsman. Monitoring the employee's communications... , https://www.rpo.gov.pl).

Moreover, the national courts did not determine whether the employer's aim could be reached the measures less heavy than the access to the employee's correspondence. In addition, none of the courts viewed the consequences of

monitoring on further disciplinary proceedings. The Court stated that the applicant was given the strictest punishment which was his dismissal (Ombudsman. Monitoring the employee's communications... , https://www.rpo.gov.pl).

The courts did not define if the employer had a real access to the employee's correspondence when he urged the applicant to explain the use of company's resources. The courts did not define where exactly when in the disciplinary proceeding the employer reached the content of correspondence. Accepting the possibility of access to the content of correspondence at any stage of disciplinary proceedings was against the principle of transparency. For these reasons, the finding of the national courts to maintain the right balance of interests was controversial. This statement seems to be an expression of a purely formal and theoretical approach. The national courts did not explain, given the circumstances, the specific reasons concerning the applicant and his employer which led him to such a conclusion.

Therefore, it appears that the courts were unable to establish whether the applicant had been notified in advance by the employer of the possibility of monitoring his correspondence with Yahoo Messenger; they also did not take into account that he was not informed of the extent of the intrusion into his private life and the secrecy of the correspondence. In addition, they did not identify specific reasons that justified the monitoring; whether the employer could have used means less restrictive of the applicant's privacy and correspondence, and whether the applicant's correspondence could be accessed without his awareness.

For all these reasons and despite the freedom of assessment of the facts by the national courts, the Court considered that the applicant had not been adequately protected by his right to respect for private life and correspondence and had not struck the right balance between the parties' interests. Thus, the Article 8 of the Convention was violated (2017).

Conclusions. Although the regulations discussed in the given article have to prevent the violation of the right to privacy and confidentiality of correspondence, they are mostly reduced to the fact that employers do not read private correspondence sent by an employee from a business email address. However, practically, it is not that simple. The employer may accidentally open the private correspondence. The other thing is that the work email has to be used only for correspondence connected with work. The employees have to remember not only about the guaranteed confidentiality of correspondence and the right to respect for private life, but also the fact that the company has the right to protect the secrecy of the company, which the employee is prohibited to disclose. Employees should be aware of this, as well as of the fact that the employer will take measures to ensure the company's information security, which requires control and monitoring of employees.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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Telecommunications (Lawful Business Practice Interception of Communications), Regulations 2000 (2000 No. 2699), art. 3.

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КОНТРОЛЬ СЛУЖБОВОЇ ЕЛЕКТРОННОЇ ПОШТИ ПЕРСОНАЛУ ЯК ЗАСІБ ІНФОРМАЦІЙНОЇ БЕЗПЕКИ ПОЛЬСЬКОГО ПІДПРИЄМСТВА

Анотація. Інформаційне право − це відносно молода галузь права, предметом якої є інформаційні відносини, що виникають у процесі обігу інформації. За останні роки сформувався великий обсяг законодавчих актів, що регулюють інформаційну сферу, зокрема сферу інформаційної безпеки та захисту інформації. Права людини в інформаційному суспільстві забезпечуються міжнародними правовими актами, що стосуються інформаційних прав особистості. Важливим аспектом інформаційної діяльності держави є ієрархія пріоритетів, серед яких на першому місці стоїть міжнародне право, на другому – національне законодавство, а вже далі − підзаконні акти, які не повинні суперечити міжнародному та національному законодавству. У статті досліджується проблема забезпечення інформаційної безпеки підприємств Польщі, одним з напрямків якої є контроль службової електронної пошти персоналу підприємств. В статті проаналізовані правові зобов'язання підприємств щодо контролю службової пошти своїх працівників та право на повагу до приватного життя. Розкрито питання санкцій за порушення конфіденційності кореспонденції та права на повагу до приватного життя. Авторами проаналізовано наукові праці з питань правового забезпечення інформаційної безпеки підприємств та констатовано, що в разі контролю службової електронної пошти персоналу роботодавець повинен керуватися такими принципами: принципом необхідності; принципом захисту гідності та особистих прав персоналу; принципом свободи та незалежності профспілок.

В статті представлений моніторинг роботи персоналу та втручання в їхнє право на повагу до приватного життя. Використання положень Закону повинно здійснюватися з урахуванням необхідності збалансовувати ці суперечливі цінності та інтереси обох сторін трудових відносин. А це значить, що моніторинг, як вид контролю роботодавця, повинен враховувати потребу поважати особисті права працівників, включаючи право на приватне життя.

Ключові слова: *інформаційна безпека, приватне життя, санкції, Європейський суд, право, Трудовий кодекс*

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MODERN ASPECTS OF CRIME PREVENTION

Abstract. We are passing through a period of time in which the big known social scourges – corruption, poverty, unemployment, drugs, and alcoholism – are completed by terrorism, organized crime, deterioration of urban environment, as well as subtle factors such as abuse, discrimination, absence of control, advocacy of violence through media. All of these factors are complemented, naturally, with particular ones for every country or region, thus amplifying social vulnerability and criminal costs. The groups which suffer the most due to high criminality rate remain always the same: the young, the elderly, women, single persons, people who live in the suburbs. Although immediate risks seem urgent, lasting improvement appear only when indirect factors are approached: poverty, illiteracy, unemployment, lack of perspective etc. Therefore, preventing crime becomes imperative for this period of time, in which the main objectives are social order, consolidation of mechanisms used to respect and apply the law, education and solidarity of the public.

Consequently, preventing crime as a social and antisocial phenomenon, which accompanies every form of organization of human existence has constituted to this day a challenge for theoreticians and practitioners of criminal sciences worldwide. Limiting to a certain extent the effects of this manifestation, characteristic of the human behavior and reducing them to a certain degree of endurance, has always represented a major preoccupation of the state, regardless of its nature. Naturally, prevention is part of the forms of reaction of society towards criminality and definitely constitutes the final, yet optimal, means of answer society must give to this species of human behavior.

Keywords: *crime, crime prevention, modern models of criminal prevention*

Introduction. Crime prevention as a social and antisocial phenomenon that accompanies every form of organization of human existence today is a challenge for theoreticians and practitioners of criminal sciences around the world. Limiting the consequences of this manifestation, and reducing them to a certain degree of endurance, has always been the main concern of the state, regardless of its nature.

Analysis of recent research and publications. «Prevention is not only the artwork of a specialist, but it requires the general effort. Beyond very limited recommendations, it implies the call for a change in mentalities... A society where communication is reconstructed, where constraints remain slim, where the person is constantly taken into consideration, will refuse violence. By refusing this defiance, a world not without violence, but a calmer world will be born.» (Answer to violence, tome 1, Presses Pocket, Paris 1977, page 222).

The purpose of our article is to study modern aspects of crime prevention.

Formulation of the main material.

1. Definition of the concept of crime prevention. Purpose and duties of prevention measures

Fight against criminality is happening in all states through specific measures, both prevention and constraint measures, with the enforcement of criminal sanctions. The problem of criminality persists in all states and the fight against it is

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inspired by the criminal politics, implying solutions at a national level.

The concept of prevention is translated by taking steps which lead to impeding the committing of crimes. The concept of prevention and fight against crime encompasses 2 determinations:

1. Post-crime prevention

2. Pre-crime prevention

Post-crime prevention signifies the ensemble of measures for re-socialization of persons who have suffered a condemnation, applied as provided by the law, either by state bodies competent in enforcing criminal punishment (when the punishment is executed in custody), by penitentiary bodies, or by groups of people (when the punishment is executed through labor), with the aim of avoiding recidivism.

Pre-crime prevention means an uninterrupted social process which implies an ensemble of social measures, applied by state bodies as provided by the law, mainly by the bodies under The Ministry of Internal Affairs and The Ministry of Justice, who work closely with different associations and organizations, in order to prevent and eliminate potential risks of committing crimes, through the identification, neutralization and removal of socio-human, subjective and objective sources, which can determine or facilitate anti-social acts. These measures are destined to essentially contribute to the permanent education of all members of society, in the spirit of obeying criminal law and legal order.

The activity of fighting crime should be understood as an ensemble of judicial and criminal measures, taken by specialized state bodies, in accordance with the law, in order to achieve the goal of the criminal trial, which is the timely and complete determination of the acts which constitute crimes, in such a manner that any person who has committed a crime will be criminally sanctioned, according to their guilt, and that no innocent person will be sanctioned according to criminal law.

Preventing crime signifies pre-empting the primary performing of those human actions or inactions, which society considers harming for its values, for which reason these behaviors have been sanctioned by criminal law (V. Clioclei, 2009).

The main objective of prevention is constituted by the ensemble of factors which determine or facilitate the realization of the criminal act.

Crime prevention represents a multilateral system of measures, aimed at:

a) Revealing and eliminating or reducing or neutralizing the causes of crime, of some separate types of crime, as well as the conditions which facilitate it

b) Revealing the groups of persons who bear a high criminal risk and reducing it

c) Revealing and eliminating situations from certain geographic areas

d) Revealing the persons whose behavior indicates the real possibility of committing crimes, as well as the corrective influence on them.

2. Classification of crime prevention and its role

Fight against crime must be done in 2 ways, namely:

a) A preventive way, for impeding the committing of crimes

b) A repressive way, for punishing those who commit crimes.

In the fight against crime, an important role is also played by the activity of the police, who prevent crime through control and public order surveillance.

There are 2 forms of crime prevention:

The first form refers to the prevention of appearance or existence of social or individual causes, which can lead to committing crimes. For example: poverty, economic crisis, conflicts between people, individual crises.

The second form refers to direct prevention of crime. For example: in the situation of the existence of a group of recidivists who always commit crimes, police bodies who monitor this group can intervene against them and in this case, stop them form committing crimes.

In accordance to the volume and the territory of crime prevention and prophylaxis, one can differentiate the following measures:

1) *General*, which aim at the discovery, the elimination and neutralization

of causes and conditions which can generate the committing of the criminal act. These measures can be aimed at large groups of persons, for example: in the fight against drug traffic, human traffic, gun traffic, etc.

2) *Special*, which are aimed towards certain categories of crimes or groups of criminals. For example: drug users, prostitutes.

3) *Individual*. These are the measures which apply to specific persons, which are on the verge of committing a crime.

1. General prevention

Is a complex multi-phasic process, comprised of interdependent elements. Thus, positive development of society, improvement of economic, politic and social institutions, would actively contribute to the general prevention of crime. In the same time, the purpose of crime prevention is not directly aimed at the change of the economic situation, but it influences a series of negative manifestations, such as:

– Poverty,

– Unemployment, etc.

Nevertheless, fight against crime does not directly pursue the raise in the level of culture of the population, but, obviously, it influences the behavior, interests and motivation of human acts and, consequently, the choice between good and bad, between a legal and an illegal behavior.

This form of prevention, namely the general prevention of crime, encompasses the main domains of social life, such as: the economic, administrative, cultural domain etc. Due to the existence of specific aspects of these domains of activity, these can generate the causes for the committing of crimes.

This complexity of criminal situations has determined Enrico Ferri to claim that using only punishment is not sufficient in the fight against crime. As an argument, Enrico Ferri states that fight against social reasons which generate crime, growth of the role of education, improvement of administration, improvement of economic conditions, etc. are also necessary.

In perspective, general prevention must bear a long-term nature, must embody all spheres of human life. For example: in the economic sphere – the development of production and use of efficient technologies, the lowering of inflation, creating new workplaces, the raise of salary level at European scale, in the social sphere – the development of middle class, strengthening family connections, etc.

2. Special prevention

Special prevention is that form of prevention which aims at directly impeding the committing of a crime. In the case of special crime prevention, it is a matter of specific acts, crimes which are on the verge of being committed and which can be stopped and prevented from happening. In this context, police plays an important role in special prevention, through the special duties it has. The measures which prevent the committing of certain crimes, in the case of special prevention, may be the following:

1) Making the citizens aware of the places in which crimes can be committed

2) Protecting goods with the help of alarm systems, etc. Special crime prevention has a much more specific character than general prevention. Thus, through special prevention, one may comprehend the prevention of committing new crimes. Special crime prevention, in the most direct way, is tightly connected to general prevention, except the measures of special prevention are much more specific and have limits concerning time, space, and persons. Moreover, general prevention takes action in the frame of the entire society, encompasses multiple spheres, such as: economic, social, politic, cultural, educational, etc.

3) Judicial factual measures can be a part of both general and special prevention. Special crime prevention measures are extremely diverse and can be classified under multiple criteria, such as: Judicial, Economic, Educational, etc.

3. Individual prevention

Targets the group of persons who have not committed crimes yet, but may commit them in the near future. This type of preventive activity is directed towards

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a specific person and towards his social micro-environment. Therefore, individual prevention must be directly aimed, as is the case with special prevention, at the person and their negative particularities, at the micro-environment, which participates in the most active manner to the shaping of the personality, as well as at the causes and conditions, which can generate or facilitate the committing of the crime.

The purpose of individual prevention consists of tracking these persons, exerting a positive influence on them, as well as on the micro-environment they belong to, in order for them to refrain from committing crimes or in order to eliminate the causes and conditions which can generate it.

3. Modern models of crime prevention

1. The repressive model

For a very long time, the social reaction against crime has had a strict repressive character. The customs of private justice consider the offence towards a group must automatically ripple to the clan they belong to, with the responsibility of the retaliation belonging to the entire group. Under „divine revenge», the leader (afterwards, the judge) could impose the application of the law (F. Mușiu, 2014).

The repressive model targets the following:

- rigorous codification of crimes and punishments, the necessity to elaborate a body of clear and accessible written laws.
- justification of the punishment by its retributive, discouraging and therefore useful character when it comes to the conservation of public order.
- the necessity to apply moderate, yet secure and prompt punishment.
- the introduction of an accusatory system in the criminal procedure; the necessity for public trial and evidence.
- the abolishment of torture as an investigation procedure, as a means to obtain evidence.
- the necessity to prevent crime.

2. The preventive model

The founder of this model is Enrico Ferri, jurist and sociologist, who challenges the repressive system conceived by the classic school. The ideas supported by the positivist school are:

- the importance of criminal behavior for the court.
- revealing hereditary and environmental factors which have determined the behavioral evolution of the criminal.
- deletion of the classic image of the reasonable person, in control of his acts and always at liberty to choose between good and bad.
- the criminal is not always at liberty to choose, being defined only by natural law (discovered only by science).
- the individualization of punishment should be done taking into account the personality of the criminal and the specific conditions which have determined the occurrence of the criminal activity.

According to these opinions, the punishment constitutes a means of social defense bearing a curative character, aimed at curing the criminal.

Modern crime prevention methods one can encounter:

– concluding partnerships with representatives of civil society: government institution, NGOs, local public authorities.

– promoting public-private partnership in crime prevention activities.

– initiation and development of local prevention programs, projects concerning prevention and fight against crime and action plans.

– development of informative and preventive activities in communities bearing a risk of victimization.

– development of educational and preventive activities, anti-victim and anti-crime training activities, from which vulnerable groups, such as children, women, elderly, persons bearing a risk of marginalization.

– conceiving promotional and informative materials, such as flyers, posters,

brochures bearing a preventive character.

3. Social defense doctrine

This doctrine is trying to combine the two conceptions (the one belonging to the classic school and the one belonging to the positivist school), granting criminal law a new purpose, namely social defense achieved both through prevention and through repression.

Fundamental ideas of this doctrine claim that:

Social defense refers to the protection of society against crime.

Protection is achieved through criminal and extra-criminal measures with the aim of neutralizing the offender (by applying emotional and educational methods or by elimination or segregation).

Social defense supports the criminal politics which prioritizes the prevention of crime and the treatment of the offender (aiming at the re-socialization of the criminal).

Re-socialization is considered a result of the humanization process of new criminal law.

Humanization of criminal law and of the criminal trial is based upon the scientific knowledge of both the criminal phenomenon and the personality of the offender.

4. The curative model

This model of criminal politics is substantiated on the results of scientific research of criminology. To the scientific data provided by clinic criminology, ideas of the social defense doctrine have added and in particular, of the new social defense.

The curative model targets:

- the focus of criminal politics on the idea of the re-socialization of the criminal.
- the introduction of treatment methods which can contribute to the social rehabilitation of the individual.
- the introduction of individualization techniques meant to contribute to the growth of the efficiency of treatment, both in the moment of the judicial individualization of the sanction and in the period of time of its execution.
- the introduction of an ensemble of social, economic, cultural, etc. measures, with the purpose of facilitating the most adequate social rehabilitation of the criminal, after the completion of the treatment. In the U.S.A., the idea of treatment underwent a certain judicial consecration in the system of sentences with an undetermined duration, combined with the measure of parole «on faith».

Conclusions. These means of non-repressive sanctioning have targeted the execution of the sanction of semi-armed prison, with the purpose of facilitating re-socialization (the criminal is allowed to live in his family and social environment, keeps his workplace, but spends the weekends and his leave in the penitentiary).

Conflict of Interest and other Ethics Statements

The author declare no conflict of interest.

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СУЧАСНІ АСПЕКТИ ПРОФІЛАКТИКИ ЗЛОЧИННОСТІ

Анотація. Автор наголошує, що ми проходимо через проміжок часу, коли великі відомі соціальні напасті – корупція, бідність, безробіття, наркотики та алкоголізм – доповнюються тероризмом, організованою злочинністю, погіршенням міського середовища, а також незначними факторами, такими як зловживання, дискримінація, відсутність контролю, пропаганда насильства через засоби масової інформації. Усі ці фактори, природно, доповнюються окремими факторами для кожної країни або регіону, тим самим посилюючи соціальну вразливість та кримінальні витрати. Групи, які страждають найбільше через високий рівень злочинності, залишаються незмінними: молодь, люди похилого віку, жінки, одинокі особи, люди, які проживають у передмістях. Незважаючи на те, що негайні ризики здаються нагальними, стійке зростання виникає лише тоді, коли наближаються непрямі фактори: бідність, безграмотність, безробіття, відсутність перспективи тощо. Тому запобігання злочинності стає обов'язковим для цього періоду часу, в якому основними цілями є соціальний порядок та консолідація механізмів, що використовуються для поваги та застосування закону, освіти та солідарності громадськості.

Отже, запобігання злочинності як соціальному та асоціальному явищу, яке супроводжує будь-яку форму організації людського існування, на сьогоднішній день є викликом для теоретиків та практиків кримінальних наук у всьому світі. Обмеження певною мірою наслідків цього прояву, характерних для поведінки людини, і зведення їх до певної міри витривалості, завжди представляло головну стурбованість держави, незалежно від її природи. Природно, що профілактика є частиною форм реакції суспільства на злочинність і, безумовно, не є остаточним, але оптимальним засобом відповіді, яке суспільство має дати цьому виду людської поведінки.

Ключові слова: *злочинність, профілактика злочинності, сучасні моделі кримінальної превенції*

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CONCEPTS AND PRECONDITIONS OF EUROPEAN REGIONAL POLICY

Abstract. The author analyzes different approaches to the definition of «regionalism», «regional policy», «Europe of the regions» and «European regional policy». The preconditions for the development of European regional policy as a component of general European integration are analyzed. The author emphasizes the necessity and importance of a common approach of EU countries to determine their own regional policy. Because no association can ensure its own existence and stability if there are different living standards within that association. Opinions of foreign and domestic scholars and practitioners on the interpretation of regional policy are studied. It has been shown that building a system based on supporting the economic growth and development of weak Member States and regions by channeling assistance from the EU central budget through investment funds is the best way for European integration.

Keywords: *European regional policy, regional policy, regionalism, European Union, Marshall Plan, Europe of the regions, cohesion policy, European integration*

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